seven thousand Union soldiers and three thousand Confederates were shot down in thirty minutes. "If this is a fight of the Kilkenny cats," remarked General Grant, "it's a comfort to know that ours has the longest tail!"

Had the North stood wholly on the defensive, and not attempted to destroy the independence of the South by invasion and conquest, all we contended for would probably have been attained by peaceful means; for, as their wisest statesman, their Vice-President, Alexander H. Stephens, assured us, the seceded States would eventually have returned to their allegiance. Had the South stood strictly on the defensive, and not pushed its armies into Maryland, Kentucky and Pennsylvania, its independence would at last have been recognized, and would have continued until it chose to come back in peace.

THE NET RESULT OF IT ALL.

And now, shutting our ears to the eloquent exaggerations of Memorial Day and the yet reverberating thunders of a thousand battles, what has been the net upshot of it all?

The Union has been re-established — *for a while;* but our victory, like the triumph of Cortes in Mexico and Pizarro in Peru, proving nothing but physical superiority, did not so touch the consciences of the Southern people, did not so fill their hearts with love for their conquerors, did not so sanctify in their souls the principle of unity, as to insure against all possible future attempts at disruption. A distinguished Southern gentleman, our college classmate, a colonel on the staff of Jefferson Davis, William Preston Johnston, President of Tulane University, widely known and everywhere honored, intimately acquainted with men and measures throughout the South, wrote us eight years ago: "I know of no man in the South who has changed his opinion as to the rightfulness of our cause during the Civil War, unless it was for his *advantage* to change it." All but unanimous as Southern men and women still are in the conviction that their cause was just and ours unjust, what would prevent them from trying the issue again, should changed circumstances appear to make it for their interest and to guarantee success?

Slavery is nominally gone, and with it the kindly feeling between master and servant; but an alarming race hatred that did not exist before has sprung up, and a determination to keep the negro down. As is natural where human beings are slaughtered like cattle by the thousand, our reverence for man as man seems everywhere to have diminished, and our foolish conceit of superiority to black, brown, red and yellow men, and poor whites of foreign nationalities, appears to increase. This thought gives rise to painful reflections.

To what shall we attribute the disposition, more apparent, we trust, than real, to excuse injustice by pointing to business prosperity; to gloss over iniquity by alleging subsequent righteousness; to justify, if they exist,* lying and treachery, torture and massacre, havoc and devastation, imprisonment and starvation of non-combatants, by showing that such inflictions were kindly meant to "make the enemy want peace and want it badly;" to impute our sins to Divine Providence, fondly persuading ourselves that "it is the Lord's doing," and "we must not shrink from our just responsibilities"?

CAUSE OF THE PRESENT DRIFT INTO MILITARISM.

If, as many allege, there exists in some quarters a craze for military glory and naval supremacy; a superstition that degrades our glorious flag into a miserable fetish; an adoption of the God-defying motto, "Our country, right or wrong!" an ambition to have our republic, armed to the teeth, strut like a turkey cock among the nations and dominate land and sea; a warping and twisting, belittling, ignoring, or defying of the United States Constitution; or an easy political virtue that forsakes the guide of our nation's youth and forgets the covenants of our fathers' God, scouting the underlying principles of Liberty and the essence of Christianity, to coquette and wanton with imperial despotism — to what shall we ascribe all these ominous tendencies more than to that tremendous struggle into which we plunged with unthinking haste, and which, first and last, in battle or by disease or hardships, shortened the lives of a million brave men, draped in mourning three million firesides, filled with "curses not loud but deep" ten million hearts, and flung away twenty thousand million dollars?

All this ostensibly and in good faith, to save the Union, maintain the Constitution, and destroy slavery! We meant well. "But the pity of it! oh, the pity of it!" Could not statesmanship, forbearance, patience and charity have found a better way than that?

We had no Hague Tribunal then; but we might have heard and heeded the golden words of the great Irish liberator, the illustrious O'Connell, echoing the voice of the Master: "No political change is worth a single crime, or, above all, the shedding of a single drop of human blood"!

H. B. S.

NEWTON, MASS.

The Hague Court in the Pious Fund Arbitration.*

BY HON. W. L. PENFIELD, SOLICITOR OF THE STATE DEPARTMENT, COUNSEL OF THE UNITED STATES IN THE PIOUS FUND ARBITRATION.

I am to speak on the subject of the Hague Court in connection with the Pious Fund Arbitration. It is expected that I shall give some account of the Court in action, some account of its proceedings, and some reckoning of the results which were achieved by that arbitration.

As you will already perceive, my statement will be of the dry-as-dust order; that is to say, a statement in a lawyer-like fashion of the bare facts as I am able to present them. Therefore I feel that I have a right to crave the indulgent consideration of this magnificent audience.

In a court room of modest size and modestly furnished, on the 15th day of last September, the first Court of Permanent Arbitration was declared open by the presiding arbitrator. On an elevated platform was ranged the tribunal; before them were the court staff, the counsel

*Let us be slow to admit that our soldiers have been guilty of "marked severities." But if forced to believe it, let us remember that, as General Bell announced to his troops, "the severest measures are the most humane!" Joshua's campaigns of extermination were perhaps the most merciful ever waged! They "shortened the war" and secured permanent peace! Our President has declared — and we wish to believe it — "Our soldiers are the most humane in the world." Half a million to a million non-combatants have perished in Luzon, and we have slain in battle fifty thousand of their fighting men; but our intentions were good! We must have peace, even if to secure it we have to "make a solitude!"

*Address at the Mohonk Arbitration Conference, May 28.

of the adverse parties, and a numerous assemblage of diplomatic representatives from Asiatic, European and American states; while looking down from the walls on the solemn scene about to be enacted were the images of the rulers of states, signatories of the Hague Convention. The thought uppermost in all minds was, that here at last was on trial the question of the peace of nations. A prodigious interest was manifested in the proceedings, for the decision to be rendered would be flashed across the seas from The Hague to the banks of the Potomac and the City of Mexico, and its echoes would be heard in the most distant courts. It was an impressive spectacle, a marvelous fulfillment of the prophecy uttered when the Peace Congress of Paris was opened a half-century ago: a day will come when bullets and bombs will be replaced by the arbitration of a great sovereign senate.

The case on trial was known as the "Pious Fund of the Californias." It originated in donations made by Spanish subjects during the latter part of the seventeenth and the first half of the eighteenth centuries for the spread of the Roman Catholic faith in the Californias. These gifts, amounting approximately to $1,700,000, were made in trust to the Society of Jesus for the execution of the pious wish of the founders. The Jesuits accepted the trust and discharged its duties until they were disabled from its further administration by their expulsion in 1767 from the Spanish dominions by the King of Spain and by the suppression of the order by the Pope in 1773. The Crown of Spain took possession of and administered the trust for the uses declared by the donors until Mexico, after her independence was achieved, succeeded to the administration of the trust. Finally, in 1842, President Santa Anna ordered the properties to be sold, that the proceeds thereof be incorporated into the national treasury, and that six per cent. annual interest on the capitalization of the property should be paid and devoted to the carrying out of the intention of the donors in the conversion and civilization of the savages.

Upper California having been ceded to the United States in 1848 by the treaty of Guadalupe Hidalgo, the Mexican government refused to pay to the prelates of the Church in Upper California any share of the interest which accrued after the ratification of the treaty. The latter presented their claims therefor to the Department of State and requested the interposition of the government. A mixed commission for the settlement of the cross claims between the two governments was formed under the convention of July 4, 1869. On the presentation and hearing of the claim the United States and Mexican commissioners divided in opinion. The case was accordingly referred to the umpire, Sir Edward Thornton, who rendered an award in favor of the United States for twenty-one annuities of $43,050.99 each as the equitable proportion to which the prelates of Upper California were entitled of the interest accrued on the entire fund from the making of the treaty of peace down to February 2, 1869. The Mexican government paid the award, but, asserting that the claim was extinguished, refused to make any further payments of interest for the benefit of the Church in Upper California Again the prelates appealed to the Department of State for support, and in 1898 active diplomatic discussions between the two governments as to the merits of the claim were begun and carried forward until they culminated in a formal agreement to refer the case to the determination of the Hague Tribunal. Only two issues were presented by the protocol, namely:

1. Is the case, as a consequence of the decision of Sir Edward Thornton, within the governing principle of *res judicata?*

2. If not, is the claim just?

And the Court was authorized to render whatever judgment might be found just and equitable.

After the protocol was signed, it was necessary under its terms for each government to select two arbitrators, who were, in turn, to select the fifth or presiding arbitrator.

Precisely as the lawyer scans the jury before he accepts the panel which is to try his case, the Department of State set on foot, through diplomatic channels, careful inquiries into the qualifications of the various members who constitute the permanent panel from which the trial court is selected. Four Asiatic, twenty European, and two American states are signatories of the Hague Convention. Each of these states is authorized to select not exceeding four persons as members of the permanent panel. The total number appointed is sixty-eight. Inquiries were made and information was gathered touching the particular qualifications of these men, their experience — judicial, diplomatic, and political — and their writings and opinions on international and political subjects.

The United States selected Professor Martens of Russia and Sir Edward Fry of England; Mexico selected Dr. Asser and Mr. Savornin-Lohman, both of the Netherlands; and they chose as presiding arbitrator Dr. Matzen of Denmark, — all being members of the permanent panel.

I will not enlarge in description of the personnel of the Court. Their impartiality, ability, and learning were evinced by the judgment rendered, as well as by the dignity and decorum of the proceedings, in keeping with the character of the Tribunal. It is a singular fact that this case, which was presented by the United States on behalf of the Roman Catholic Church against a state in which the Roman Catholic is the predominant religion, was decided by a court composed of five judges, all of the Protestant faith.

Already, before the Court had formally convened, the preliminary briefs, or statements, and the evidence on either side had been prepared and submitted to the arbitrators.

In declaring the Court opened, the president expressed the hope that they might inaugurate the labors of arbitration tribunals under the Hague Convention in a manner responsive to the thought which inspired its creation and the aim which it was called upon to facilitate, namely, the settlement of disputes between states upon the only solid basis, the basis of respect for law.

The first order of the Court announced by the president was that the language of the Tribunal would be French, saving to the parties the right to speak also in English, and that the debates would be public.

The next order of the Court was on a point of procedure respecting the submission of certain written pleadings. The next rule respected the order of oral

arguments under which the United States was to open, Mexico to answer, the United States to reply and Mexico to rejoin.

Excluding days of recess, the arguments occupied ten days. On October 1 the president declared the closure of the debates, that the Tribunal would deliberate upon the matter in litigation, and that the sentence would be read in a public session, of which the agents and counsel of the two governments would be duly notified.

The Court reconvened accordingly, after due notice, on October 14, and the president read the opinion. It awarded to the United States the sum of $1,420,082.67 in gross, and a perpetual annuity of $43,050.99, payable in the legal currency of Mexico. The judgment was unquestionably sound and received the prompt acceptance of both states.

Considering the magnitude of the cause and the historic nature of the evidence and issues involved, the brevity of the trial was extraordinary. But no trial can be too short which is ample for the ends of justice. To terminate the controversy as soon as possible in the due course of justice, to hasten the restoration of those relations of amity which may have been strained or interrupted between the states at variance, and at the same time to exalt the character and reputation of the Tribunal for ability, impartiality, rectitude and justice, were among the chief aims of its institution.

It was with not a little surprise that the appearance was observed of members of the permanent panel as advocates before the Court. It is unnecessary to dwell on certain incidents that occurred during the progress of the trial. It is enough to say that the appearance in successive trials in the same court of the same gentlemen acting alternately as advocates and judges is fraught with snares, as it is inconsistent with American ideals of judicial justice.

At the Hague Conference Lord Pauncefote foresaw the peril. He vainly sought to avert it by a provision of the Convention. He declared for the wholesome rule which would disqualify members of the Permanent Court from practising before the Court. But public opinion can prohibit even where the organic law is silent. To the judges of the Supreme Court we would not permit the practice; and the reason of the maxim, "Once a judge always a judge," is of infinite pith and moment in its application to the Hague Court, where such mighty interests are at stake.

Still other perils lie before the Hague Tribunal. It is strange, but nevertheless true, that one of these perils arises out of the depth of interest created by the Pious Fund Arbitration. The case has been the subject of Presidential messages to the United States and the Mexican Congresses; was the occasion of an interpellation of the government in the French Legislative Chamber, of mention in other parliamentary bodies and in the diplomatic correspondence of many states, and of extensive discussion in the American and the European press. The depth of interest and feeling excited is not without danger of producing internal dissensions among the ardent friends of the cause. Time, patience, forbearance and reasonableness are needful to solve the problem, as it must be worked out, if at all, along practical lines. But, with abiding faith in the skillful hand that guides and guards our foreign relations, we need not fear that the cause which the Hague Court represents will fail miserably, as the new Union of the States under the Constitution, when threatened with dissensions, did not fail at the hands of its friends, who shared in bringing it into being and setting it on its course.

At this point Mr. Penfield laid aside his manuscript and said:

I beg to differ, therefore, in opinion from one of the speakers, who said in substance that no analogy could be drawn between the public action and influence of the Hague Court and that of the Supreme Court of the United States. Constitutions and laws are but parchment unless they are informed with moral sentiment and with ties of political and commercial interest. It was that sentiment and those ties that saved the Constitution and that established the Supreme Court of the United States finally as the permanent arbitrator between the states of the Union; and the same sentiment and the same ties, political and commercial, will establish the Hague Court finally as the accepted permanent arbitrator in disputes between nations.

Mr. Penfield then resumed reading as follows:

It goes without saying that in the trial of any lawsuit the judge should be as far removed as possible from any motive, interest or influence which might even unconsciously warp his judgment. There were two safeguards of judicial impartiality in the Pious Fund Case. In the first place, a panel of sixty-eight publicists and jurists was at hand to choose from. They had been selected each by the ruler of his own state; they had been selected as the justices of the Supreme Court are appointed, not with reference to any particular controversy, but because of their supposed fitness for the arbitral function.

No man can be truly a judge in his own cause. Consequently it was stipulated in the protocol that none of the arbitrators should be a native or citizen of the contracting states. The result justified the experiment by the freedom, during the progress of the trial, from manifestation of judicial bias or partisan feeling, and by the award unanimously given. Judging from experience and from the conflicting attitudes of the two governments with respect to the questions of liability and of the currency in which the award should be payable, it is probable that if the contracting states had each selected one of its own citizens as arbitrator, there would have been three opinions rendered, a majority opinion and two dissenting opinions, one by the Mexican arbitrator on the question of liability and one by the American arbitrator on the question of the currency in which the award should be paid.

On May 7, 1903, protocols were signed for the submission to the Hague Tribunal of a question in which eight European and three American states are concerned. The usual course would have been for each party to the arbitration to name one or more of its own citizens or subjects as a part of the Tribunal, and we should, perhaps, have witnessed dissensions which in the past have distracted the deliberations of tribunals so constituted. What more convincing evidence of the wisdom of the precedent set by the United States and Mexico than the stipulation of the protocols, recently signed, that none

of the arbitrators shall be a citizen or subject of any of the signatory or creditor powers?

I have stated the nature of the issues and the manner in which they were formed between the parties. It will be observed that the issues submitted by the arbitrating states to the Hague Court were joined and tried in essentially the same manner as the issues in lawsuits before the municipal courts.

There is, first, the transaction which begets the controversy. This results in conflicting contentions and arguments between the parties until the ultimate issues of law and fact are evolved and reduced to written form. Then the case is brought before the appointed court, to whom the statements of the case and the evidence on either side are submitted. On the hearing, the one having the affirmative opens and is followed by the adversary. The Court holds stated sessions, decides incidental questions of procedure, finally declares the hearings closed, then deliberates and renders solemn judgment. In short, the principles of judicial procedure are essentially the same, whether before the Roman praetor, the civil courts of Germany, France, Italy, Spain or South America, or before the English or American judge or magistrate, or the Supreme Court of the state, or the Supreme Court of nations.

On July 29, 1899, the Hague Convention had been signed. Nearly three years had elapsed, and yet of the twenty-six contracting states no one had moved the reference of any of their numerous controversies to arbitration under the Convention. We were losing time. No opportunity was to be lost to charge the Court with the active exercise of its functions in order that it might show forth its usefulness.

When diplomatic discussion of the Pious Fund Case had reached the stage of irreconcilable disagreement between the two governments, namely, on March 13, 1902, the Secretary of State instructed Ambassador Clayton to say to the Mexican government that "the President feels that it would especially redound to the credit of the United States and of Mexico if the two North American republics might be the first states to submit to the Hague Tribunal for determination by it an international controversy. The department has no doubt that President Diaz would share in the pleasure which all Americans would feel in the high example thus set by two of the leading republics of this hemisphere. You will, in the exercise of your discretion, bring the matter to the attention of the Mexican government, in order that if the suggestion is favorably received one of the principal advantages of the arbitration may not be lost by a possible prior reference of some other case to that tribunal."

Within about two months thereafter, namely, on the twenty-second day of May, the protocol for the submission of the case to the Hague Tribunal was signed by the Secretary of State and the Mexican ambassador.

The Pious Fund Arbitration came none too soon. One of the arbitrators said one day he was talking with a friend about the Permanent Court and expressed the opinion, not then uncommon in Europe, that the Court would never be called to hear a case. One week from that day he received his appointment as arbitrator.

What gains, then, do we count from the Pious Fund arbitration?

First: Saving the Hague Court from perishing by neglect.

Second: The precedent of the submission of the case to absolutely disinterested arbitrators.

Third: The example of the actual workings of the Tribunal.

Fourth: The authoritative establishment of the principle of public law that issues once fairly tried and determined between arbitrating states are settled forever.

Fifth: The example set by two republics of the New World witnessing, foremost among nations, their faith in the Hague Tribunal.

Sixth: Let us now make our final reckoning. With the five powerful, vital monarchies, Japan, Russia, Germany, Austria, Hungary and Italy, we balance the six great, vital republics, France, the United States, Mexico, Brazil, Chili and the Argentine Republic, and the democracy of the British empire. They all stand committed by policy, and the most of them by faith, to the principle of arbitration. The Hague Court will, then, stand, and will grow in usefulness and power. It will in large measure be to international politics what the Supreme Court is to the domestic politics of the United States in the settlement of disputes between states. It will be the organ of the enlightened will and conscience of the world's democracy.

The United States government presses no claim against any government which it does not believe to be just and which it is not willing to arbitrate. If evidence of this fact were needed, it is at hand. During the last six years this government has brought to issue eighteen cases against foreign governments. Of these, five have been submitted to mixed commissions and thirteen to arbitration. Of this number five are still pending; namely, the cases before the Joint High Canadian Commission, the Alaskan Boundary Commission, the Venezuelan Commission, an arbitration with Santo Domingo, and the Hague arbitration of next September. Of the other thirteen, one was the case before the Chilean Claims Commission; and of the twelve arbitrations, one minor case was decided against the United States; another in which the United States and the British governments were held liable to the German government for naval operations in Samoa; and ten were decided in favor of the United States, with awards amounting to upwards of $2,500,000. One case was brought to issue and the arbitrator appointed, and on the final submission in full of the claimant's evidence to the Department of State, the case was withdrawn on the ground that it appeared to be wanting in substantial justice. During this period $1,130,506.55 has been returned to the Mexican government which had been collected on awards rendered on fabricated evidence. Thus, when tried by either test, the success which has attended the enforcement of its just claims by arbitration, or the refusal to press an unjust case and the refundment of moneys unjustly collected, we have a right to be proud of the record of our government, proud of the justice and magnanimity of our country.

When we reflect that the United States government has been a party to sixty-eight commissions and arbitrations in all; that it has been a party to one-fourth of these during the last six years; that in the span of a lifetime the United States has won acknowledged leader-

ship among the nations in the one cause in which all states and all peoples are most deeply concerned, we are heartened with increased hope in the ultimate triumph of international justice and with fresh inspiration to strengthen in us our faith in the self-governing democracy.

Recently its powerful influence has again been cast into the scales in favor of international arbitration; and on the first day of next September, it will appear the second time and in the second case to be heard before that Tribunal, where will be arrayed on one side three European states and on the other five European and three American states. How marvelous and inspiring is the contrast between the beginning of the nineteenth century, when the star of Napoleon fell at Leipzig in the shock of the battle of nations, and the dawn of the twentieth century, when the morning star of peace rises at The Hague over eleven states yielding homage to a common law in the arbitration of nations!

The American College and International Arbitration.*

BY PRESIDENT W. H. P. FAUNCE, OF BROWN UNIVERSITY.

Horace Mann uttered a truth with which we are all familiar, but which we often forget, when he said: "Whatever you wish to have appear in the life of a nation you must first introduce into its schools." Every reform begins as a feeling, as an instinctive and unreasoned revolt; then it becomes an idea; then it passes into an education. No reform achieves anything until it passes beyond the hortatory stage, beyond the dream stage, and settles down to the serious, slow plodding, irresistible work of education. Teach in the schools that society is a social contract, and that solely, and a little later you will have in the streets a French Revolution. Teach in the schools the doctrine of *laissez faire*, and you will soon have employers who steel their hearts against their fellowmen. Teach in the schools the essential brotherhood of all men, and you are doing much to pave the way for the federation of all civilized nations.

Moreover, whatever may be true of the old world, it is true in America that a large part of the moral energy of our generation is pulsating through the American college. Some of us have been willing to leave the active pastorate in the hope of getting more deeply into the ministry. Once the Church monopolized the moral energy of the community; the man who wished to do good to his fellows must do it through the avenues of the Church. Happily now for the Church itself, it is no longer the only avenue of moral energy. When I look down on the average Sunday morning congregation I am oppressed by the perception of how large a percentage of the average Sunday gathering — complacent, conventional and respectable — is not likely to be seriously changed by anything that the preacher may do or say. By reason of mis-education, by reason of the warping influence of unhappy experience, by reason of the fixity that comes with years, by reason of fossilization of mind, a very large percentage will not be changed by anything the Sunday service may offer. But you never can feel that way as you look down upon an audience of college men. As I look down upon four or five hundred such every morning, I feel as if I were looking on a company of locomotives, standing on the track with the steam up. No trouble about getting them to go! The only difficulty is to get them moving on the right rails. A large part of the energy of our time is pulsating through the American college, and for this reason it is a supremely important matter how our colleges are thinking regarding international arbitration. Therefore, I welcome here — if I may stand beside our host for a moment — so many college graduates, college professors and executives. Let us carry home from this Conference something of stimulus which we may give to the young men and women of this country, stirring them to work for the great and noble cause in whose name we are assembled.

Now what can the colleges do, and what are they doing? You will be surprised if I say anything about college athletics. Those of us who read the newspapers — and we all do, those of us who believe in the veracity of reporters — and some of us do, are aware that according to popular opinion the most important department in the well-conducted college of to-day is that of athletics. But in athletics our students are committed to the principle that whenever in intercollegiate contests there arises any dispute whatever, it shall be referred to impartial expert opinion. Boys trained to believe *that*, for four years in a secondary school, and for four years more in college, are getting hold of a principle that will bear wider application yet. In all their athletic sports our young men are made to learn not only chivalry toward a defeated foe, not only loyalty to a defeated friend, but they are made to believe in the futility and brutality of violence; they are made to recognize that a dispute is to be referred always to brain, and never to brawn; that it is expert opinion that counts when two colleges fall out in a legitimate contest, and that they must submit instantly when the referee has pronounced his decision. If the Duke of Wellington believed that the battle of Waterloo was won on the playground at Eton, may we not believe that our college athletic fields are the rehearsals for Geneva Conferences and Hague Tribunals and Pan-American Congresses, and in their small measure are doing a little something to bring about the parliament of man, the federation of the world! [Applause.]

But there is another thing our colleges are doing, — they are showing us the service of science in preparing a mechanism of international public opinion. I venture to say that public opinion in the international or even the national sense, is a modern thing. Public opinion as a force in the sense in which we now have it and can wield it, is something essentially novel, and something that depends for the machinery of its operation and the means of its execution on the apparatus furnished by scientific invention and discovery, often in the laboratories of our colleges. The world has acquired through modern science, as it were, a new nervous system. The network of railways that cover the continent, the cables that pierce every sea, the wireless wonders of Marconi, — all these furnish a mechanism which is a nervous system to the world. What would it mean to a human being to acquire suddenly a new nervous system? Vastly more than it means for the world.

*Address at the Lake Mohonk Arbitration Conference, May 27, 1903.